

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #15	CCRB Case #: 202203080	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Wednesday, 12/02/2020 6:04 PM	Location of Incident: 62nd Precinct stationhouse	Precinct: 62	18 Mo. SOL 6/2/2022	EO SOL 6/2/2022	
Date/Time CV Reported Sat, 05/14/2022 11:08 PM	CV Reported At: CCRB	How CV Reported: On-line website	Date/Time Received at CCRB Sat, 05/14/2022 11:08 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SGT Ernest Hernandez	00247	951815	PBMS SU PST
2. SGT Heriberto Hernandez	01584	932167	WTC CMD

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. PO Tamara Clement	21959	962322	BK COURT
2. PO John Ramos	15813	957985	PBBS SU PST

Officer(s)	Allegation	Investigator Recommendation
A.SGT Heriberto Hernandez	Force: Sergeant Heriberto Hernandez used physical force against § 87(2)(b)	
B.SGT Ernest Hernandez	Force: Sergeant Ernest Hernandez used physical force against § 87(2)(b)	
C.SGT Heriberto Hernandez	Discourtesy: Sergeant Heriberto Hernandez acted discourteously toward § 87(2)(b)	

Case Summary

On May 12, 2022, an anonymous individual filed a complaint with the Mayor's Office. On July 12, 2022, the complaint was forwarded to the CCRB. On May 14, 2022, an anonymous individual filed a complaint with the CCRB via email. Both complaints were filed by non-witnessing complainants based on media coverage of the incident.

At approximately 6:04 p.m. on December 2, 2020, § 87(2)(b) traveled to the 62nd Precinct stationhouse in order to obtain a copy of a lost property report that she had filed there on a previous date. Several officers at the stationhouse informed her that she could not obtain a copy of the report there and would have to obtain the document elsewhere. § 87(2)(b) insisted that the officers give her a copy of the report. § 87(2)(b) took out a cell phone and started to record the officers. Officers told her that she was not allowed to record and ordered her to leave the stationhouse. § 87(2)(b) refused to comply. Several officers, including Sergeant Heriberto Hernandez, Sergeant Ernest Hernandez, Police Officer Tamara Clement and Police Officer John Ramos, grabbed § 87(2)(b) by her arms. Sgt. Heriberto Hernandez and Sgt. Ernest Hernandez then forced her to the floor to arrest her (**Allegations A and B: Force – Physical force,** § 87(2)(g)). Afterwards, Sgt. Heriberto Hernandez pulled a facemask § 87(2)(b) was wearing up over her eyes (**Allegation C: Discourtesy – Action,** § 87(2)(g)). § 87(2)(b) was arrested and charged with resisting arrest, obstruction of governmental administration, criminal trespass and disorderly conduct (fighting/violent behavior) (Board Review #01). § 87(2)(b) was initially sent to § 87(2)(b) to receive treatment for her diabetes while in police custody. She was not diagnosed with any injuries during this visit. During a later follow-up visit at § 87(2)(b) however, she was diagnosed with a fracture to her left elbow.

The investigation obtained BWC footage from this incident (Board Review #02). No other video footage was obtained.

Due to media coverage, this case was added to the agency's list of sensitive cases (Board Review #03-04).

Findings and Recommendations

Allegation (A) Force: Sergeant Heriberto Hernandez used physical force against § 87(2)(b)

Allegation (B) Force: Sergeant Ernest Hernandez used physical force against § 87(2)(b)

§ 87(2)(b) § 87(2)(b) declined to make her available to the CCRB for a sworn statement. Sgt. Heriberto Hernandez was interviewed by the CCRB on September 9, 2022. PO Clement was interviewed by the CCRB on November 10, 2022. Sgt. Ernest Hernandez was interviewed by the CCRB on January 11, 2023. PO Ramos was interviewed by the CCRB on March 22, 2023.

It is undisputed that § 87(2)(b) visited the 62nd Precinct stationhouse and requested a copy of a missing property report that she had filed previously. § 87(2)(b) spoke to several officers, including PO Clement, about obtaining a copy of the report. The officers told § 87(2)(b) that they could not provide a copy at the stationhouse and advised her to obtain a copy elsewhere. § 87(2)(b) insisted that the officers provide her with a copy there. The officers argued with § 87(2)(b) for several minutes at a vestibule located at the stationhouse's main entrance. The officers

told § 87(2)(b) to leave. She did not comply. Several officers then placed § 87(2)(b) under arrest. The officers grabbed § 87(2)(b) by her arms. § 87(2)(b) then went to the floor. It is disputed whether the officers deliberately forced her to the floor. Once she was down, the officers placed her in handcuffs. They then lifted § 87(2)(b) to her feet and escorted her to the front desk for arrest processing.

§ 87(2)(a)

[REDACTED]

§ 87(2)(a)

[REDACTED]

[REDACTED]

§ 87(2)(b) also provided copies of § 87(2)(b) notice of claim as well as a federal complaint filed in the Southern District of New York (Board Review #06-07). § 87(2)(a)

§ 87(2)(b) also provided a statement to the online media outlet § 87(2)(b). In it, she stated that she filed the report for the missing glucometer so that her insurance company would issue her a replacement. § 87(2)(b) states that she held up her cell phone and told the officers that she was

recording them. She denied, however, that she actually made a recording, explaining that she only told the officers that she was recording them because the officers were acting in a hostile manner towards her.

§ 87(2)(b) declined to have § 87(2)(b) sign a HIPAA medical release form. § 87(2)(b) instead provided partial records of § 87(2)(b) treatment from various medical providers in the wake of the incident. § 87(2)(b) declined to provide the full copies of § 87(2)(b) medical records.

According to § 87(2)(b) medical records from § 87(2)(b) § 87(2)(b) She was in police custody at the time. The prehospital care report summary states that she was transported to the hospital by EMS after she complained of lower back pain. Once at the hospital, § 87(2)(b) complaint of pain in her back and both arms, as well as hyperglycemia related to her diabetes. § 87(2)(b) stated that she had been thrown on the floor. Insulin was administered for her diabetes. No mention is made in the records of any imaging tests performed or of any fractured bones (Privileged Documents).

According to § 87(2)(b) medical records § 87(2)(b) § 87(2)(b) § 87(2)(b) She complained of pain in both wrists, forearms and elbows, as well as her lower back and knees. X-rays were performed on both arms, covering the wrists, forearms and elbows, as well as her lower back. The image on her left elbow showed “no convincing evidence” of an acute fracture but stated that there was a possibility of an occult intra-articular fracture. No other fractures or possible fractures are noted. A follow-up was recommended for the possible occult fracture on § 87(2)(b) left elbow (Privileged Documents).

According to § 87(2)(b) medical records from § 87(2)(b) § 87(2)(b) complaining of pain, stiffness and swelling in both elbows and her left wrist. She stated that she had experienced the pain since § 87(2)(b) . § 87(2)(b) stated that police officers assaulted her, pushed her to the ground and tackled her arms. The records note that § 87(2)(b) § 87(2)(b) where X-ray examinations were performed on her elbows. A new X-ray was performed on the left elbow. The doctor diagnosed § 87(2)(b) with a sprain and a nondisplaced fracture of the coronoid process of the ulna in her left elbow. § 87(2)(b) § 87(2)(b) returned to the hospital, complaining of back pain. She states that she was assaulted by several police officers while attempted to obtain a lost property report for her glucose reader. Notes from this visit state that § 87(2)(b) was diagnosed with an occult fracture in one of her elbows during the earlier visit. An X-ray of § 87(2)(b) back found a contusion but no fractures (Privileged Documents).

The officers’ testimony was generally consistent, except as noted. At the time of § 87(2)(b) arrival, Sgt. Ernest Hernandez worked as the desk officer and PO Clement worked as the stationhouse security officer. Sgt. Heriberto Hernandez and PO Ramos were both assigned to the precinct’s Public Safety Team and were preparing to leave the stationhouse to go out on patrol. These officers acknowledged that there were other officers present at the stationhouse, but they did not recall who they were. When § 87(2)(b) entered the building, she first spoke to PO Clement by the entrance. Eventually, Sgt. Ernest Hernandez and Sgt. Heriberto Hernandez joined in the conversation. The officers told § 87(2)(b) that she could not obtain a copy of her report from the stationhouse. § 87(2)(b) insisted that they provide it to her. § 87(2)(b) became irate and raised her voice. The officers speaking to her remained calm. The officers told § 87(2)(b) to leave the stationhouse because her irate demeanor was disrupting the stationhouse and because they had already explained how she could get a copy of her report elsewhere. § 87(2)(b) took out her cell phone and appeared to start recording. The officers, noting that NYPD policy forbids civilians from making video recordings anywhere inside of precinct stationhouses, ordered § 87(2)(b) to stop

recording. § 87(2)(b) ignored them and continued holding up her phone. Sgt. Heriberto Hernandez stated that officers told § 87(2)(b) to leave before she started recording, while Sgt. Ernest Hernandez, PO Clement and PO Ramos stated that she was already recording when they told her to leave.

Sgt. Heriberto Hernandez stated that when § 87(2)(b) did not leave the stationhouse or cease recording as ordered, he informed her that she was under arrest. He explained that he decided to arrest her because her failure to leave as ordered constituted trespassing. He also felt that § 87(2)(b) loud behavior was “disorderly” and that her failure to comply with the officers’ order constituted obstruction of governmental administration. Sgt. Heriberto Hernandez made the decision to arrest § 87(2)(b) himself, without consulting any other officers. After making this decision, he grabbed one of § 87(2)(b) wrists. He did not recall which one. Several other officers, whom he could not recall, also reached out and grabbed § 87(2)(b) arms. § 87(2)(b) responded by holding her arms against her chest and stiffening her body. Sgt. Heriberto Hernandez told her to yield control of her hands and to turn around. § 87(2)(b) screamed but did not directly respond to him. Sgt. Heriberto Hernandez spent approximately two minutes trying to pull § 87(2)(b) arms loose, but she continued holding them to her chest. Sgt. Heriberto then decided to force § 87(2)(b) to the floor in order to gain control of her hands. He brought her down by pulling on § 87(2)(b) wrists. He did not recall if any other officers took any actions to bring § 87(2)(b) down. § 87(2)(b) fell to the floor and started rolling around. She continued holding her arms against her body. Sgt. Heriberto Hernandez leaned down and resumed pulling on § 87(2)(b) arms. Other officers leaned down to assist Sgt. Heriberto Hernandez, but he did not recall who they were or what they did. After about a minute, one of these other officers managed to pry § 87(2)(b) arms from against her chest, at which time the officer and Sgt. Heriberto Hernandez placed § 87(2)(b) in handcuffs. Sgt. Heriberto Hernandez did not recall officers using any force beyond grabbing § 87(2)(b) arms and pulling her down to the floor.

Sgt. Ernest Hernandez and PO Ramos both stated that once Sgt. Heriberto Hernandez reached out to arrest § 87(2)(b) they assisted him by grabbing onto § 87(2)(b) arms. Once they grabbed her, however, § 87(2)(b) went down to the floor. Neither Sgt. Ernest Hernandez nor PO Ramos was certain whether an officer forced § 87(2)(b) to the floor. They did not recall seeing any officers making any further contact with § 87(2)(b) beyond holding her arms before she went to the floor. Once § 87(2)(b) was down, both officers grabbed one of her arms to place her in handcuffs. They denied making further contact with her. They did not recall what actions the other officers took around § 87(2)(b) while she was on the floor.

PO Clement stated that she did not clearly recall the physical actions that officers took to bring § 87(2)(b) into custody. She saw several officers approach § 87(2)(b) but did not recall if they made contact with her, including grabbing her arms. PO Clement denied that she touched § 87(2)(b) at that time. After the officers approached § 87(2)(b) PO Clement saw her lying on the floor. PO Clement did not recall how § 87(2)(b) came to be on the floor or how she was positioned there. She did not know if § 87(2)(b) was forced to the floor by officers, if she fell, or if she dropped herself. Several officers leaned down to handcuff § 87(2)(b) while she was on the floor. PO Clement did not recall what contact they made with § 87(2)(b). She did not recall tell what § 87(2)(b) was doing at this time either but did note that she heard Sgt. Heriberto Hernandez tell § 87(2)(b) to stop resisting and to place her hands behind her back. PO Clement denied that she touched § 87(2)(b) herself during this time.

None of the officers recalled § 87(2)(b) sustaining or complaining of any injuries during her arrest. Sgt. Heriberto Hernandez and PO Clement recalled that § 87(2)(b) was taken to a hospital because of her diabetes but were not aware of her receiving treatment for any physical injuries. Sgt.

Ernest Hernandez and PO Ramos did not recall § 87(2)(b) receiving medical treatment after the incident.

Sgt. Heriberto Hernandez's BWC recording depicts § 87(2)(b) arrest (Board Review #08). At the start of the recording, § 87(2)(b) is standing in a vestibule at the stationhouse's entrance with several officers. They appear to be speaking to each other, but the first minute of the conversation is inaudible. § 87(2)(b) is holding a cell phone. Behind her, a sign is posted on the wall stating that members of the public are forbidden from making recordings in the stationhouse. At 1:00 into the recording, Sgt. Heriberto Hernandez triggers his BWC, and sound can be heard. An unidentified female officer in plainclothes tells § 87(2)(b) that officers have activated BWC. § 87(2)(b) points at PO Clement and says that she told her to "go online." PO Ramos and PO Clement tell § 87(2)(b) that she cannot record. PO Clement points the sign out to her. § 87(2)(b) replies, "I'm allowed, I'm allowed." Sgt. Heriberto tells § 87(2)(b) "Ma'am, you can't rec... Ma'am, we're asking you to leave. You're not leaving, and you're not allowed to record." § 87(2)(b) shakes her head. At 1:23 into the recording, Sgt. Heriberto Hernandez grabs § 87(2)(b) right forearm with his right hand. He tells her, "Turn around." § 87(2)(b) starts to scream. The camera goes dark for about two seconds. § 87(2)(b) is then seen on the floor in a seated position. Officers are holding her arms out at her sides. Sgt. Heriberto Hernandez shouts, "Turn around." The officers roll § 87(2)(b) onto her right side. The camera then goes dark again for about four seconds. A female voice states, "Ma'am, calm down, turn over. Stop resisting." At 1:36 into the recording, § 87(2)(b) is seen lying on her back on the floor. Sgt. Heriberto Hernandez holds her right arm out, extended from her body. She continues screaming. The camera angle does not clearly show the rest of her body. Sgt. Heriberto Hernandez tells her to turn around. A female voice then states, "Arm up and over." At 1:56 into the recording, Sgt. Heriberto Hernandez tells § 87(2)(b) to turn around again, stating, "I'm not playing with you." § 87(2)(b) is then seen to be lying face-down on the floor with her arms behind her back. A clicking sound is heard. Sgt. Heriberto Hernandez states, "That's it, now you're going to jail." He then gets up and walks out of the vestibule. Other officers remain standing by § 87(2)(b). At 2:36 into the recording, § 87(2)(b) is seen standing on her feet. It is unclear from the recording if she stood up or was lifted. No further physical struggle is seen on the recording.

The other officers' footage is generally consistent with Sgt. Heriberto Hernandez's. Sgt. Ernest Hernandez's BWC footage shows Sgt. Heriberto Hernandez first grab § 87(2)(b) left arm at 1:11 into the recording. Sgt. Ernest Hernandez then grabs § 87(2)(b) right upper arm with his left hand. He pulls down on the fabric of her jacket. § 87(2)(b) torso moves forward as she starts screaming. § 87(2)(b) goes to the floor, initially into a seated position, before going down to her right side. Sgt. Ernest Hernandez continues holding onto her jacket at first, but then appears to release the jacket and stand up. At 1:28 into the recording, he grabs § 87(2)(b) left arm. Other officers are holding the left arm with him as well. Sgt. Ernest Hernandez then takes out a set of handcuffs and applies them to § 87(2)(b) left wrist. At 1:51 into the recording, he applies the handcuffs to § 87(2)(b) right wrist. The officers release their grip on § 87(2)(b) arms. § 87(2)(b) rolls onto her right side. At 2:15 into the recording, officers pull § 87(2)(b) into a seated position and then lift her to her feet (Board Review #09).

PO Clement's BWC footage shows Sgt. Heriberto Hernandez grab § 87(2)(b) left arm at 1:23 into the recording. Sgt. Heriberto Hernandez and Sgt. Ernest Hernandez pull her right arm downwards. § 87(2)(b) swings her left arm upwards. PO Clement and PO Ramos grab § 87(2)(b) left arm. § 87(2)(b) falls into a seated position. At 1:30 into the recording, PO Clement releases § 87(2)(b) and steps back. Other officers surround her. The camera angle does not clearly show § 87(2)(b) body or what the officers are doing to her. At 2:00 into the recording, a clicking sound is heard as Sgt. Ernest Hernandez finishes handcuffing her (Board Review #10).

PO Ramos' BWC footage shows Sgt. Heriberto Hernandez grab § 87(2)(b) right arm at 1:22 into the recording. PO Ramos joins PO Clement in grabbing § 87(2)(b) left arm. Sgt. Heriberto Hernandez and Sgt. Ernest Hernandez pull § 87(2)(b) down by her right arm. PO Ramos continues holding § 87(2)(b) left arm as she lands on the floor, first in a seated position and then on her right side. At 1:33 into the recording, PO Ramos stands up. He continues gripping her left arm. At 1:48 into the recording, Sgt. Ernest Hernandez bends over § 87(2)(b) with a pair of handcuffs. PO Ramos is seen to still be holding § 87(2)(b) left arm. At 2:01 into the recording, Sgt. Ernest Hernandez completes handcuffing § 87(2)(b) (Board Review #11).

After viewing his BWC footage, Sgt. Heriberto Hernandez stated that when he first grabbed § 87(2)(b) arms, § 87(2)(b) reacted by holding the arms against her body. He responded by pulling her to the floor by her arm. When Sgt. Ernest Hernandez reviewed his footage, he stated that § 87(2)(b) fell to the floor on her own. He did not believe, based on what he saw on the video, that § 87(2)(b) was deliberately forced down by the officers.

After PO Clement reviewed her BWC footage, she stated that she did not independently recall the actions depicted but acknowledged that it does show her grabbing § 87(2)(b) arm. She also stated that it appeared, based on her footage, that Sgt. Heriberto Hernandez and Sgt. Ernest Hernandez did deliberately pull § 87(2)(b) to the floor. When PO Ramos reviewed his footage, he stated that he did not notice any officers deliberately forcing § 87(2)(b) to the ground.

§ 87(2)(b) arrest report was prepared by PO Clement. The narrative states that § 87(2)(b) trespassed at the stationhouse after she was ordered to leave. § 87(2)(b) also used her cell phone to make a recording inside the stationhouse, which is prohibited. It further states that § 87(2)(b) resisted arrest by flailing her arms. The force notation states that a forcible takedown was used to overcome § 87(2)(b) resistance and/or aggression. The report indicates that § 87(2)(b) § 87(2)(b) at the time of the arrest. She was 5'5" tall and weighed 200 pounds (Board Review #01).

Sgt. Ernest Hernandez prepared an entry in the command log for § 87(2)(b) arrest. It states that § 87(2)(b) physical and mental condition at the time of her arrest was "apparently normal," but also notes that she was transported to § 87(2)(b) while in custody (Board Review #12).

The TRI report for § 87(2)(b) arrest was prepared by Lieutenant Joseph Pollari. It states that Sgt. Heriberto Hernandez, Sgt. Ernest Hernandez and PO Ramos used a "forcible takedown" and "wrestling/grappling" against § 87(2)(b) due to "active resistance" towards officers. The narrative states that § 87(2)(b) trespassed at the stationhouse by refusing to leave and recording officers on her cell phone despite prohibitions against making recordings at the stationhouse. § 87(2)(b) resisted arrest by flailing her arms (Board Review #13).

§ 87(2)(b) medical treatment of prisoner report was prepared by PO Malika Assing. It states that at § 87(2)(b) § 87(2)(b) was transported to § 87(2)(b) because she stated that she is diabetic and was experiencing back pain (Board Review #14).

§ 87(2)(g) While Sgt. Ernest Hernandez stated that he believed § 87(2)(b) dropped to the floor herself once officers grabbed her, both Sgt. Heriberto Hernandez and § 87(2)(b) indicated that officers forced her down against her will. This is consistent with the officers' BWC footage as well. The two sergeants are seen pulling downwards on § 87(2)(b) right arm as soon as he grabs her. Additionally, PO Clement's and PO Ramos' BWC recordings show that § 87(2)(b) left arm shot up when the sergeants

pulled down on the right. This appears to be an immediate response to the sergeants pulling down on the other side of her body. If § 87(2)(b) had intentionally dropped her own weight to the floor, she would not have extended her left arm upwards while doing so.

NYPD Patrol Guide procedure 221-01 states that officers may use physical force when it is reasonable to place a person in custody. Any application of force must be reasonable under the circumstances. Factors to consider when evaluating whether a particular use of force was reasonable include the nature and severity of the crime/circumstances, the actions taken by the subject, the immediacy of the perceived threat or harm posed by the subject, whether the subject is actively resisting custody, the number of subjects in comparison to the number of officers present, and the size, age and condition of the subject in comparison to the officers present (Board Review #15).

§ 87(2)(g)
§ 87(2)(b). The officers moved to arrest § 87(2)(b) after she refused to leave the stationhouse as instructed. While officers are empowered to use physical force to bring individuals into custody, § 87(2)(g)
§ 87(2)(g)

First, § 87(2)(b) behavior prior to her arrest did not create urgency or pose a threat to the officers. Sgt. Heriberto Hernandez stated that he arrested § 87(2)(b) for criminal trespass, obstructing governmental administration and disorderly conduct. None of these are violent offenses. While the officers claimed that her behavior was disrupting the stationhouse, they did not claim that § 87(2)(b) posed a threat either to their or § 87(2)(b) own safety.

Second, § 87(2)(b) was not in a position to pose a threat to the officers even if she had intended to do so. The BWC footage shows that § 87(2)(b) was by herself and that she was surrounded by at least five officers when Sgt. Heriberto Hernandez initiated the arrest. § 87(2)(b) § 87(2)(b) at the time of the incident, standing 5'5" tall and weighing 200 pounds. The officers therefore had a clear advantage over § 87(2)(b) in age, size, and numbers.

Third, § 87(2)(b) did not have an opportunity to present obvious physical resistance before the sergeants forced her to the ground. Sgt. Heriberto Hernandez stated that he forced § 87(2)(b) to the floor because she tried to prevent officers from handcuffing her by holding her arms stiff against her chest. He estimated that he spent one or two minutes trying to pull her arms loose before pulling her to the floor. The BWC footage, however, shows that the sergeants pulled down on § 87(2)(b) arms as soon as they grabbed her. She was on the ground within seconds. Based on the BWC footage, there was no time for § 87(2)(b) to pull her hands away from the officers or to engage in a struggle with the sergeants. PO Clement's and PO Ramos' footage also shows that § 87(2)(b) left arm was elevated away from her body as she fell, not held close against her chest.

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

Allegation (C) Discourtesy: Sergeant Heriberto Hernandez acted discourteously toward

§ 87(2)(b)

§ 87(2)(a)
§ 87(2)(a)
§ 87(2)(a)

Sgt. Heriberto Hernandez initially stated that he recalled seeing § 87(2)(b) wearing a face mask during the incident. The mask was covering § 87(2)(b) eyes and nose. He did not recall if it was in that position throughout the incident or if it was moved into that position at some point. When later asked if any officers adjusted § 87(2)(b) face mask during this incident, Sgt. Heriberto Hernandez stated that he placed the mask on § 87(2)(b) face after she was arrested. The mask covered § 87(2)(b) eyes and nose when he first applied it. A few seconds later, he adjusted the mask so that it was only covering her nose and mouth. He denied that he had intended to cover § 87(2)(b) eyes when he first applied it. Sgt. Heriberto Hernandez acknowledged that after the arrest, he told § 87(2)(b) “You did this to yourself.” He explained that he meant that § 87(2)(b) was at fault for her arrest because she had refused to comply with the officers’ orders to stop recording and leave the building.

PO Clement’s BWC recording depicts the interaction between § 87(2)(b) and Sgt. Heriberto Hernandez after the arrest (Board Review #10). § 87(2)(b) is seen to be wearing a black face mask at the start of the interaction. At 2:35 into the recording, § 87(2)(b) is brought to her feet after being handcuffed. Her face mask covers her mouth but does not cover her nose. At 2:45 into the recording, Sgt. Heriberto Hernandez pulls § 87(2)(b) mask upwards, placing it in a position that covers her mouth, nose, and eyes. He states, “Put up your mask.” He then turns and walks away from her. PO Clement scans § 87(2)(b) forehead with a thermometer but does not adjust the mask. At 2:53 into the recording, Sgt. Heriberto walks back to § 87(2)(b) and pulls the mask down, uncovering her eyes. He tells her, “Ma’am, all you had to do was cooperate. You did this to yourself.” Officers then walk § 87(2)(b) to the front desk.

After viewing PO Clement’s BWC recording, Sgt. Heriberto Hernandez stated again denied that he intentionally placed the mask over § 87(2)(b) eyes.

NYPD Patrol Guide procedure 200-02 states that the NYPD is committed to treating citizens with compassion, courtesy, professionalism, and respect. Officers are expected to respect the dignity of each individual and render services with courtesy and civility (Board Review #16).

§ 87(2)(g)
The BWC footage shows that after § 87(2)(b) was handcuffed, her mask was only covering her mouth, not her nose. Since the face mask would have been ineffective at protecting § 87(2)(b) from infection if it did not cover her nose, § 87(2)(g) Sgt. Heriberto Hernandez, however, pulled the mask up well over her nose, covering her eyes. Doing so served no practical purpose. Sgt. Heriberto Hernandez is seen on the BWC footage looking directly at § 87(2)(b) face when he pulls the mask up. He then turns away. This indicates that he was aware that the mask was covering her eyes when he walked off. If Sgt. Heriberto Hernandez had, as he alleged, accidentally pulled the mask up over § 87(2)(b) face, then he could have fixed the mask immediately, rather than walking away.

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (Board Review #17).
- Sgt. Heriberto Hernandez has been a member of the service for 19 years and has been a

subject in 12 CCRB complaints and 25 allegations, four of which were substantiated.

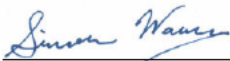
- 200907980 involved a substantiated allegation of physical force – nightstick as a baton. The Board recommended that he receive charges. The NYPD imposed charges, taking five vacation days.
- 201903480 involved a substantiated allegation of failure to provide RTKA card. The Board recommended that he receive instructions. The NYPD imposed instructions.
- 201909948 involved a substantiated allegation of threat of force. The Board recommended that he receive a command discipline. The NYPD declined to take disciplinary action.
- 202006271 involved a substantiated allegation of threat of force. The Board recommended that he receive a command discipline. The NYPD declined to take disciplinary action.
- § 87(2)(g) [REDACTED]
- Sgt. Ernest Hernandez has been a member of the service for 11 years and has been a subject in one CCRB complaint and three allegations, one of which was substantiated.
 - 201303276 involved a substantiated allegation of refusal to provide medical treatment. The Board recommended charges. The NYPD imposed charges, taking two vacation days.
 - § 87(2)(g) [REDACTED]

Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) [REDACTED] filed a Notice of Claim with the City of New York, including claims of physical injuries, emotional distress, and false imprisonment, and seeking damages to be determined by a jury as redress (Board Review #06). § 87(2)(a) [REDACTED]
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [REDACTED]

Squad: 15

Investigator:	<u>Owen Godshall</u>	<u>SI Owen Godshall</u>	<u>04/13/2023</u>
	Signature	Print Title & Name	Date

Squad Leader:	<u></u>	<u>IM Simon Wang</u>	<u>04/14/23</u>
	Signature	Print Title & Name	Date

Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date